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COMMISSIONER

OPEN MEETING ITEM



ORIGINAL 225

BRIAN C. McNEIL
EXECUTIVE SECRETARY

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AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: August 15, 2002

DOCKET NO: S-03415A-01-0000

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Philip J. Dion III. The recommendation has been filed in the form of an Opinion and Order on:

EASY MONEY AUTO LEASING, INC. et al.
(NOTICE OF OPPORTUNITY)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **12:00 noon.** on or before:

AUGUST 26, 2002

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

AUGUST 29, 2002

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

DOCKETED

AUG 15 2002

DOCKETED BY	
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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF:

7 EASY MONEY AUTO LEASING, INC.
2102 E. Sharon Drive
Phoenix, Arizona 85022

8
9 SUPERIOR FINANCIAL SERVICES, INC.
2102 E. Sharon Drive
Phoenix, Arizona 85022

10
11 JAMES ANTHONY CICERELLI
13027 N. Surrey Circle
Phoenix, Arizona 85029

12
13 DAVID PAUL FRENCH
2102 E. Sharon Drive
Phoenix, Arizona 85022

14
15 Respondents.

DOCKET NO. S-03415A-01-0000

DECISION NO. _____

OPINION AND ORDER

16 DATE OF HEARING:

November 13, 2001

17 PLACE OF HEARING:

Phoenix, Arizona

18 ADMINISTRATIVE LAW JUDGE:

Philip J. Dion III

19 APPEARANCES:

James Cicerelli, In Propria Persona; and

20 Mark Dinell, Securities Division, on behalf of
the Arizona Corporation Commission.

21 **BY THE COMMISSION:**

22 Having considered the entire record herein and being fully advised in the premises, the
23 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

24 **FINDINGS OF FACT**

25 1. On May 14, 2001, the Securities Division ("Division") of the Commission filed a
26 Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution,
27 for Administrative Penalties, and for Other Affirmative Action ("Notice") against Easy Money Auto
28 Leasing, Inc. ("Easy Money"), Superior Financial Services, Inc. ("SFS"), James Anthony Cicerelli

1 and David Paul French (collectively the "Respondents") in which the Division alleged that
2 Respondents have engaged in acts, practices, and transactions that constitute violations of the Arizona
3 Securities Act ("Act").

4 2. The Respondents were duly served with copies of the Notice.

5 3. On May 29, 2001, David French filed a request for a hearing.

6 4. On June 1, 2001, Easy Money, through its bankruptcy counsel, Mr. Robert Suzenski,
7 filed a Notice of Bankruptcy, Notice of Stay, Limited Appearance and Request for a Hearing.¹

8 5. On June 11, 2001, the Commission issued a Procedural Order that set a pre-hearing
9 conference for July 9, 2001.

10 6. On July 9, 2001, the pre-hearing was held as scheduled. Mr. Cicerelli appeared and
11 was represented by counsel. Mr. Cicerelli, through his counsel, requested a hearing be set in this
12 matter. Mr. French and SFS appeared without the aid of counsel. Mr. French appeared on behalf of
13 SFS, and requested a hearing on behalf of SFS. Easy Money failed to appear, although it had
14 requested a hearing in this matter. The Division also appeared with counsel.

15 7. During the pre-hearing, the Division stated it would not be responding to Easy
16 Money's Notice of Stay because the Division had spoken with James Cross, who is the attorney for
17 the bankruptcy trustee in Easy Money's bankruptcy case, and Mr. Cross agreed that the Stay does not
18 apply to this proceeding. However, the Division indicated that if the Commission ordered restitution,
19 then the Division would have to request the Bankruptcy Court to lift the Stay to enforce the
20 restitution order. The Division indicated that those measures were not necessary if the Commission
21 ordered fines, as they are penalties that are criminal in nature and therefore, the Stay does not affect
22 them. No party objected the Division's comments and the portion of Easy Money's Notice regarding
23 a Stay was denied.

24 8. On August 7, 2001, a Procedural Order set this matter for hearing on October 1, 2001.

25 9. On September 17, 2001, the Commission received a letter from David French. In the
26 letter, Mr. French requested a continuance of the hearing because he needed time to retain counsel.

27 _____
28 ¹ Easy Money filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code in the United States
Bankruptcy Court for the District of Arizona in Case No. 00-09192-ECF-CGC on August 23, 2000.

1 10. On September 19, 2001, James Cicerelli, on behalf of himself, filed a Motion to
2 Continue the hearing in order to retain counsel in this matter. Staff of the Hearing Division contacted
3 Ms. Ivy Kushner, who had represented Mr. Cicerelli at the pre-hearing, regarding Mr. Cicerelli's
4 Motion. Ms. Kushner indicated that she would be filing a Motion to Withdraw. Ms. Kushner
5 indicated she would assist Mr. Cicerelli in his efforts to retain new counsel.

6 11. On September 19, 2001, the Division responded to Mr. French's letter and opposed the
7 request for continuance. The Division also opposed Mr. Cicerelli's motion to continue the hearing.

8 12. On September 19, 2001, Staff of the Hearing Division contacted Mr. James Cross,
9 attorney for the Easy Money bankruptcy trustee. Mr. Cross indicated that he would not take a
10 position or appear in this matter.

11 13. On September 21, 2001, Staff of the Hearing Division contacted Mr. Robert Suzenski.
12 Mr. Suzenski indicated that he represented Easy Money in its bankruptcy proceedings, but would not
13 represent Easy Money in this matter.

14 14. On September 25, 2001, the Commission issued a Procedural Order that granted a
15 continuance and rescheduled the hearing to November 13, 2001.

16 15. On October 25, 2001, Ms. Kushner filed a Motion to Withdraw. The Motion stated
17 that Mr. Cicerelli consented to the Motion to Withdraw and Mr. Cicerelli's signature at the end of the
18 Motion verified that fact. Therefore, Ms. Kushner's Motion to Withdraw was granted.

19 16. On November 14, 2001, a full public hearing was conducted before a duly authorized
20 Administrative Law Judge at the Commission's offices in Phoenix, Arizona. Mr. Cicerelli was the
21 only Respondent to appear for the hearing. The Division appeared and was represented by counsel.
22 The Division indicated that it was prepared to proceed against Mr. David French, SFS and Easy
23 Money in absentia. Therefore, the hearing against those three Respondents was held in absentia.
24 Testimony was taken, and more than 50 exhibits were admitted into evidence in the course of the
25 proceeding.

26 17. On January 31, 2002, the Division submitted closing memoranda.

27 18. Mr. Cicerelli also filed some documents on January 31, 2002. The documents he filed
28 were not in the form of a closing brief, but appear to be exhibits that Mr. Cicerelli wants the

1 Commission to consider in deciding this case. Those documents were not disclosed prior to the
2 hearing in Mr. Cicerelli's list of exhibits, were not brought to the Commission's attention during the
3 hearing or entered into the record as evidence. Additionally, Mr. Cicerelli chose not to testify at the
4 hearing and it appears he is trying to use some of those documents to circumvent being cross-
5 examined. Therefore, we will not consider those documents in making our decision in this matter.

6 19. Easy Money is a Nevada corporation whose last known address is 10243 North
7 Scottsdale Road, Ste. 5, Scottsdale, AZ 85253.

8 20. SFS is a company whose last known address is 2102 East Sharon Drive, Phoenix,
9 Arizona 85022.

10 21. James Anthony Cicerelli, whose last known address is 13027 North Surrey Lane,
11 Phoenix, Arizona 85029, was the President of Easy Money.

12 22. David French, whose last known address is 2102 East Sharon Drive, Phoenix, Arizona
13 85022, was the president of SFS and Secretary of Easy Money.

14 23. Mr. French was at all relative times the sole proprietor in SFS and there is no evidence
15 that Mr. Cicerelli was involved in any way with SFS.

16 24. Beginning in October of 1988, Respondents operated an automobile sale-lease-back
17 business. They represented that Easy Money would purchase automobiles from individuals in need
18 of cash and then lease the cars back to those same individuals. The transaction required the
19 individual to transfer his or her vehicle title to Easy Money. If the individual defaulted on the
20 payments, Easy Money would repossess the vehicle.

21 25. Respondents represented to investors that they needed capital in order to purchase the
22 vehicles that they intended to lease-back to the original owners.

23 26. Respondents sold over 40 promissory notes and/or investment contracts to over 25
24 investors.

25 27. The promissory notes and/or investment contracts stated that the investor would place
26 a certain amount of money into Easy Money's account for the purpose of purchasing, renting or
27 leasing vehicles.

28 28. The promissory note and/or investment contract stated that investors would receive up

1 to 2 1/2 percent interest per month, or an annual return of up to 30 percent.

2 29. Respondents represented that the promissory notes were fully secured by adequate
3 collateral, that the investments were liquid and 100 percent secured and insured against loss. Further,
4 Respondents handed out a brochure to prospective investors that indicated that Easy Money had an
5 established and proven track record, extensive support and marketing, and virtually no competition.

6 30. Investors were told by Respondents that there was no risk in investing in Easy Money.

7 31. During the hearing, the Division called Robert Hoffacker as a witness. Mr. Hoffacker
8 testified that he was retired engineer who had some investment expertise. He testified he mainly
9 invested in mutual funds and stocks. Mr. Hoffacker testified that he heard about Easy Money
10 through his son and his daughter. Mr. Hoffacker's daughter, Louise Hoffacker, worked for Easy
11 Money and was also listed as a Director of the company.

12 32. Mr. Hoffacker testified that he was about 80 years old when he met with Mr. Cicerelli.
13 Mr. Hoffacker stated that Mr. Cicerelli told him about Easy Money's business plan. Mr. Cicerelli
14 stated it was a lease-back situation in which Easy Money would purchase a vehicle from an
15 individual and then lease it back to that same individual. Mr. Hoffacker stated that once the
16 individual paid off the loan, Easy Money would return the title to the individual. However, if the
17 individual did not pay off the loan, Easy Money would repossess the car.

18 33. Mr. Hoffacker testified that he was not told anything else about the business, nor did
19 Mr. Cicerelli mention anything about the risk of running an automobile lease-back business.

20 34. Mr. Hoffacker further testified he asked Mr. Cicerelli for financial statements on a
21 number of occasions, but never received a financial statement.

22 35. Mr. Hoffacker testified that he invested approximately \$40,000 in Easy Money in June
23 of 1999 and \$100,000 with Easy Money in August of 1999.

24 36. Mr. Hoffacker testified that his investment of approximately \$40,000 was funded
25 through an IRA rollover to Easy Money through the Paragon Bank. Mr. Hoffacker testified that he
26 used the Paragon Bank to transfer his VanGuard IRA into Easy Money's account at the suggestion of
27 Mr. Cicerelli.

28 37. Mr. Hoffacker testified he thought his two investments were to be used for the purpose

1 of buying, leasing and renting vehicles.

2 38. Mr. Hoffacker did not believe that any of that money was going to be used to pay for
3 the personal expenses of either Mr. Cicerelli or Mr. French or pay interest to other investors.

4 39. Mr. Hoffacker further testified that the Respondents never asked for his consent to use
5 his money for any purpose other than the buying, leasing and renting of vehicles.

6 40. Mr. Hoffacker testified that he was promised a return of 2 1/2 percent per month, or 30
7 percent per year on his investment.

8 41. Mr. Hoffacker said that the payments were fairly regular for about six months and he
9 received approximately \$17,000 before the payments suddenly stopped.

10 42. Mr. Hoffacker indicated that shortly after his investment in August, he sent Mr.
11 Cicerelli a fax (dated November 2, 1999) asking to liquidate his loan in the amount of \$100,000. Mr.
12 Hoffacker stated he had become suspicious because he kept asking for financial statements and never
13 received any.

14 43. Mr. Hoffacker testified he faxed a letter (dated November 9, 1999) to Valley First
15 Community Bank, which is the parent company of Paragon, and requested that his IRA with Easy
16 Money be closed out immediately.

17 44. Mr. Hoffacker testified that he did not receive any of his money back. He stated that
18 the only document he received was a letter from an attorney at law, Ms. Ivy Kushner, who
19 represented Easy Money. The letter stated that they were going to repay Mr. Hoffacker by the end of
20 1999. However, Mr. Hoffacker testified he did not receive his money. Mr. Hoffacker further
21 testified that he tried to contact Ms. Kushner on a number of occasions, but never made contact with
22 her.

23 45. Mr. Hoffacker testified that it was his understanding that Easy Money filed for
24 bankruptcy in the spring of 2000, which was about the time the payments from Easy Money ceased,
25 and he has not received any money from the bankruptcy proceeding.

26 46. Mr. Hoffacker testified that he received a brochure about the company. He stated he
27 was not exactly sure where he received the brochure, but he thought it was from Mr. Cicerelli.

28 47. Mr. Hoffacker testified that the brochure entitled "Advantages of Easy Money Auto

1 Leasing" stated that Easy Money had an established and proven track record, virtually no competition
2 and that the investment was 100 percent secured and insured against loss.

3 48. Mr. Hoffacker testified that if he had known that Easy Money was only established in
4 November of 1998 and did not have an established and proven track record, that would have affected
5 his decision to invest his money with Easy Money.

6 49. Mr. Hoffacker testified that had he known Easy Money had at least 12 different
7 competitors in the market, that would have affected his decision to invest money as 12 competitors
8 was greater than "virtually no competition."²

9 50. Mr. Hoffacker also testified that his investments were not 100 percent secured, nor
10 were they insured against loss as he had lost approximately \$120,000 of the money he invested with
11 Easy Money.

12 51. At the hearing, Mr. Hoffacker identified Mr. Cicerelli as the man who told Mr.
13 Hoffacker about the Easy Money business plan, that Mr. Cicerelli was the man who signed the
14 contracts with Mr. Hoffacker and that he was the man who accepted his \$100,000 check and his
15 \$40,000 IRA rollover.

16 52. On cross-examination, Mr. Hoffacker admitted that he knew his daughter made a
17 commission on his investments.

18 53. The Division next called Margaret Peirson as a witness. Ms. Peirson stated that she is
19 a 77-year-old woman who had completed high school and two years of college. She testified that she
20 had never taken any classes in investing and the only type of investment she made was through the
21 Fannie May Secondary Mortgage Company, which was an employee stock purchasing plan. Ms.
22 Peirson testified that her employment history consisted of mostly clerical positions.

23 54. Ms. Peirson testified that she heard about Easy Money through David French. She
24 testified that she was introduced to Mr. French through a friend.

25 55. Ms. Peirson testified she called Mr. French and told him she was interested in the Easy
26 Money program as described to her by her friend. She stated that Mr. French then sent her some
27

28 ² Mr. French had told another investor that there were at least twelve competitors in the market.

1 material about Easy Money. During the phone conversation, Ms. Peirson said that Mr. French told
2 her that Easy Money purchased automobiles and then leased them back to their original owners. She
3 further testified that Mr. French never told her about the risk of the business, never asked about her
4 financial background, and never asked about her financial net worth.

5 56. The literature that Ms. Peirson received from Mr. French was in the form of a
6 brochure. She testified that she received a brochure entitled "Advantages of Easy Money Auto
7 Leasing" in January of 1999.

8 57. Ms. Peirson testified that the brochure indicated that Easy Money had an established
9 and proven track record.

10 58. She stated that she did not know that Easy Money had only been incorporated in
11 November of 1998 and didn't think that three months was enough time to claim that Easy Money had
12 an "established and proven record."

13 59. Ms. Peirson went on to state that the brochure told her that her investment would be
14 100 percent secure and insured against loss.

15 60. Ms. Peirson also stated that she received another brochure from Mr. French entitled
16 "Auto Leasing Gross Return Table." She stated that the table did not talk about risk and explained
17 how Easy Money was able to provide 30 percent return to investors.

18 61. Based on her conversation with Mr. French and the brochures she received about Easy
19 Money, Ms. Peirson testified she invested \$10,000 in Easy Money in January of 1999.

20 62. She testified that her contract stated she would receive a return of 2.5 percent a month,
21 or 30 percent annually.

22 63. Ms. Peirson testified that she thought her \$10,000 would be used for the purpose of
23 buying and leasing vehicles.

24 64. Ms. Peirson stated that she did not intend the company to use the money for any other
25 purposes such as paying for the personal expenses of the Respondents or to pay interest to other
26 investors.

27 65. Ms. Peirson stated that the Respondents never asked for her consent to use the money
28 for any purpose other than buying or leasing vehicles.

1 66. Ms. Peirson stated that the contract she entered into with Easy Money was signed by
2 James Cicerelli, who was the President of Easy Money.

3 67. Ms. Peirson testified that at some point later, her money was returned to her by David
4 French. Mr. French told her that there were too many investors and since she had only put in
5 \$10,000, which was less than anyone else, Easy Money was returning her money. Mr. French then
6 told her that if she was able to invest more money, they were going to start another company like
7 Easy Money in Ohio.

8 68. Ms. Peirson admitted on cross-examination that she did receive a full refund of the
9 \$10,000 she invested with Easy Money and received interest payments on the loan up until the time
10 her money was refunded.

11 69. After subsequent conversations with Mr. French, Ms. Peirson testified she invested
12 \$50,000 with Mr. French in June of 1999. Ms. Peirson stated that she did not invest the \$50,000 with
13 Easy Money, but with a company called Superior Financial Services, Inc. Although the name was
14 different, Mr. French told Ms. Peirson that the business was similar to Easy Money and that they
15 were purchasing cars and leasing them back to the individual owners.

16 70. Ms. Peirson testified that in the agreement she signed with SFS, she recognized the
17 signature of David French. The agreement stated that David French was the President of SFS.

18 71. Ms. Peirson testified that she subsequently made two additional investments of
19 \$10,000 each to SFS in August of 1999. She again testified that the contract she signed with SFS had
20 David French's signature, and he was listed as President of SFS.

21 72. Ms. Peirson testified that she received dividends from SFS for approximately six
22 months and then the payments stopped in March of 2000. At that point, Ms. Peirson called Mr.
23 French. Mr. French told her that he would Federal Express her interest payment within the week, and
24 that she shouldn't be worried because if the company defaulted or were to go bankrupt, there were
25 enough assets to pay all of the investors back.

26 73. Ms. Peirson testified that she has not received any of her money back.

27 74. Ms. Peirson testified that she wrote a letter to Mr. French one month before her
28 conversation with Mr. French regarding the missed interest payment, in which she asked for a return

1 of her money. Ms. Peirson indicated that she wanted to invest in something else and asked Mr.
2 French for a refund. Ms. Peirson testified that she received a letter from Mr. French in which he
3 recognized her request for a full return of her investment and told her that she would be the next
4 lender to be paid in full. Ms. Peirson stated that she did not receive any payment from Mr. French.

5 75. The contract that Ms. Peirson signed with SFS has essentially the same terms and
6 conditions as the contract she signed with Easy Money.

7 76. Ms. Peirson testified that, in her investments with Easy Money and SFS, she was a
8 passive investor and did not make any decisions.

9 77. Based upon Ms. Pearson's testimony, she invested \$70,000 with SFS and received
10 \$14,500 in the form of interest payments.

11 78. The Division also called Lynn Andrews.³ Ms. Andrews testified that she had
12 previously invested in bonds and mutual funds, and that she was a very conservative investor. She
13 further testified that she heard about Easy Money through friends of hers, Bonnie Hart and Rick Nab.
14 Ms. Andrews testified that they told her about the wonderful returns they were making so she began
15 considering investing with Easy Money.

16 79. Ms. Andrews testified that Ms. Hart and Mr. Nab put her in contact with Jim Cicerelli.
17 She stated that she met Mr. Cicerelli in September or October of 1998.

18 80. Ms. Andrews testified that, at the meeting, Mr. Cicerelli told her that Easy Money was
19 a very sound business and that he had personally been in the auto lease-back business for years with
20 another entity called Superior Leasing. Ms. Andrews further testified that Mr. Cicerelli told her that
21 he and his partner, Mr. French, were going to open up different offices around the country including
22 Tucson and Cleveland. Ms. Andrews stated that Mr. Cicerelli told her that there was no risk in this
23 business and that her investment would be completely 100 percent insured. Ms. Andrews further
24 testified that he told her the name of an insurance company with which Easy Money was insured
25 with, but she had since forgotten that name. Ms. Andrews stated that Mr. Cicerelli told her he was
26 "just making a fortune" and that she would receive 30 percent on her money.

27
28 ³ Ms. Andrews appeared telephonically at the hearing.

1 81. Ms. Andrews stated that it was her understanding that Easy Money had been in
2 business for a while and that it was not a new company. She testified that she waited a couple of
3 months before investing to see how Mr. Nab and Ms. Hart's investments panned out. She stated that
4 those two friends informed her that they were making a fabulous return.

5 82. Ms. Andrews stated that she had her accountant look into Easy Money and do some
6 due diligence.

7 83. Ms. Andrews testified that Mr. Cicerelli never told her about the risk involved in an
8 operation like this. She further testified that in the fall of 1998 she received a financial statement
9 from Easy Money containing profits and expenses that was in the form of a balance sheet.⁴ Ms.
10 Andrews testified she assumed the balance sheet was accurate.

11 84. Ms. Andrews testified that she had her final meeting with Mr. Cicerelli in December
12 of 1998. She stated she had decided to invest with Easy Money based upon her accountant's
13 recommendations and Mr. Nab's and Ms. Hart's recommendations. She testified she told Mr.
14 Cicerelli that she was willing to put \$20,000 into Easy Money, but Mr. Cicerelli indicated that in
15 order to get the 30 percent return, she would have to put in more money. Ms. Andrews testified that
16 she invested \$40,000 with Easy Money in December 1998.

17 85. Ms. Andrews testified that the \$40,000 was paid to Easy Money in the form of a
18 check. She stated she brought the check to Mr. Cicerelli directly and handed it to him at his office.

19 86. Ms. Andrews testified that she received a brochure from Easy Money talking about its
20 proven track record, the fact that there was no competition and that her investment was 100 percent
21 secured and insured against loss.

22 87. Ms. Andrews testified that had she known Easy Money was only started in November,
23 1998, that there were competitors in the market and that her investment was not 100 percent secured
24 and insured, she would not have invested with Easy Money.

25 88. Ms. Andrews testified that she entered into an investment contract with Easy Money
26 and Mr. Cicerelli signed the contract as President of Easy Money.

27 _____
28 ⁴ Ms. Andrews testified she received those materials before November 1998 when Easy Money was incorporated in Nevada.

1 89. Ms. Andrews' contract stated that she would place up to \$40,000 in the company
2 account for the purpose of leasing vehicles.

3 90. Ms. Andrews testified that the contract promised her a return of 2.5 percent per month,
4 or 30 percent annually.

5 91. Ms. Andrews testified that she expected Mr. Cicerelli, given his experience, and the
6 other employees of Easy Money, to operate the business. She stated she was just a passive investor.

7 92. She further testified that she did not intend for her money to be used to pay the
8 personal expenses of Mr. Cicerelli or Mr. French or that the money be used to pay interest to other
9 investors.

10 93. She further testified that the Respondents never asked for her consent to use her
11 money for anything other than leasing vehicles.

12 94. Ms. Andrews testified that approximately six months after she invested with Easy
13 Money, she was contacted by Mr. Cicerelli. She stated Mr. Cicerelli told her that she should invest
14 up to \$100,000 more with Easy Money as they were expanding their operations. Ms. Andrews
15 testified that she could not possibly raise that much money, and did not invest any more money with
16 Easy Money.

17 95. Ms. Andrews testified that she received interest payments from the time of the
18 contract until approximately 12 months later. She stated that she received approximately \$12,000 in
19 interest payments.

20 96. When the interest payments stopped, Ms. Andrews called Mr. Cicerelli. He stated that
21 he had to put his father in the hospital, and that Easy Money was going to file for bankruptcy.

22 97. Ms. Andrews testified that she was upset and called her friend, Ms. Hart. Ms.
23 Andrews stated that Ms. Hart sounded shocked and that Ms. Hart said she did not know anything
24 about the possible bankruptcy of Easy Money. When Ms. Andrews asked Ms. Hart about Mr. Nab,
25 Ms. Hart indicated that Mr. Nab had received a refund of his money as he needed money to assist his
26 ailing father who was in the hospital.

27 98. Ms. Andrews testified that she never knew Ms. Hart received a commission on her
28 investment.

1 99. On cross-examination, Ms. Andrews admitted that it was Ms. Hart who gave her the
2 financial statements from Easy Money.

3 100. Ms. Andrews also testified that her accountant told her this was a risky proposition.

4 101. Ms. Andrews stated that she thought a return of 30 percent per year was tremendously
5 excessive and that she was afraid of it, but because of her friends, whom she truly trusted, she
6 decided to invest her money in Easy Money.

7 102. The Division also called Mark Klamrzynski, who is a senior forensic accountant with
8 the Securities Division of the Commission.

9 103. Mr. Klamrzynski testified that the document entitled "Easy Money Auto Leasing
10 Gross Return Table" stated that "the above table will explain how we are able to pay our investors an
11 excellent return on their investment and continue to function as a profitable business."

12 104. Mr. Klamrzynski testified that the table was misleading. He stated that Easy Money
13 was using gross revenue in calculating the return. He stated that a typical accounting calculation or
14 any investment calculation for a return would use net income. He further testified that net income is
15 gross sales or gross revenues minus expenses. He stated that using gross profit as a measure to
16 calculate returns is misleading because a business can have a large gross profit, but still be
17 unprofitable.

18 105. Mr. Klamrzynski also testified that, in his experience, he would expect to see some
19 disclosures in the document regarding sales, preferably some historical information. He also stated
20 that if a company is new, then that information would be presented in a projection-type format, and
21 the company would base its estimates on some legitimate facts. He stated that nothing in the table
22 regarding Easy Money indicates any sort of historical or pro forma data.

23 106. Mr. Klamrzynski then stated that during his investigation, he obtained the bank
24 records from Valley First Community Bank for eight different bank accounts. The bank accounts
25 were titled as follows: Easy Money Auto Leasing, Easy Money Auto Leasing, Inc., Nationwide
26 Financial Services, United Auto Finance, James Cicerelli and Tambi Lee Cicerelli, Superior Financial
27 Services and two accounts under the same name, TLC Enterprises, Inc. , d/b/a Commercial
28 Enterprises.

1 107. Mr. Klamrzynski testified that Mr. Cicerelli was the signatory on all of the accounts,
2 except for Superior Financial Services. He testified that the signator on that account was David
3 French.

4 108. Mr. Klamrzynski testified that excluding the Superior Financial Account, Mr. Cicerelli
5 signed the majority of the checks drawn upon the accounts he examined.

6 109. Mr. Klamrzynski testified that his analysis in this matter is incomplete because he
7 does not have all of the bank records from Valley First Community Bank. He testified that, based on
8 his experience, he believes there could be as much as approximately \$300,000 deposited into those
9 accounts that are unaccounted for, and that makes up approximately 21 percent of the investments in
10 this case.

11 110. Mr. Klamrzynski testified that there were numerous transfers of money between all of
12 the accounts.

13 111. He testified that from October 26, 1998 through August 8, 2001, the majority of the
14 money deposited into these accounts came from investors. He testified that approximately
15 \$1,343,000 of the \$2,280,000 deposited into those eight accounts came from individual investors. He
16 stated that Mr. Cicerelli, Tambi Lee Stephenson or David French deposited the investors' money into
17 those accounts.

18 112. Mr. Klamrzynski testified that in his analysis, Easy Money had gross revenue of
19 approximately \$316,000 and approximately \$313,000 in expenses, for a net income of approximately
20 \$3,000.

21 113. Mr. Klamrzynski stated that over \$517,000 was disbursed from Respondents to the
22 investors.

23 114. He further testified that, in his opinion, the only source of funds to repay investors the
24 interest they were promised was from other investor money.

25 115. He further testified that Easy Money fit the definition of a Ponzi scheme. He stated
26 that a Ponzi scheme is a fraudulent-type activity whereby investors think they are investing in a
27 viable business and that their returns are being paid as a result of the business. However, the Ponzi
28 scheme does not pay returns out of a viable business because the business does not exist or is merely

1 a facade. Investors are paid a return out of new investor money that is raised.

2 116. Mr. Klamrzynski testified that one investor, Margaret Peirson, made out a \$50,000
3 check to SFS and that the check was cashed by Mr. French. He stated that Mr. French did not deposit
4 the entire \$50,000 into the SFS account, but took \$5,000 of cash out. Mr. French deposited \$45,000
5 into the SFS account. On the same day of the deposit, Mr. French wrote himself a check in the
6 amount of \$2,000. Mr. Klamrzynski said that prior to the \$45,000 deposit into the SFS account, the
7 account only had \$946 in it. Therefore, without the deposit, Mr. French could not have written
8 himself a check for \$2,000. Mr. Klamrzynski testified that a few days later, Mr. French wrote a
9 \$2,000 check on the SFS account to World Travel. He further stated that on that same day, he wrote
10 a check to Easy Money for the amount of \$25,000 and on the memo statement, it said "loan."

11 117. Mr. Klamrzynski stated that the \$25,000 check from SFS to Easy Money was
12 deposited by James Cicerelli. However, Mr. Cicerelli only deposited \$19,000 as he received \$6,000
13 in cash at the time of the deposit.

14 118. Mr. Klamrzynski testified that Mr. Cicerelli had taken cash out from other investors
15 checks in this manner at least ten other times. Mr. Klamrzynski stated that most of the cash
16 withdrawals made by Mr. Cicerelli were for less than \$1,000.

17 119. Mr. Klamrzynski stated that he believed over \$540,000 of the investors' money was
18 disbursed either to Mr. Cicerelli, Mr. French or related entities that were controlled by Mr. Cicerelli
19 or Mr. French.

20 120. The Division also called Ronald Clark, who is the chief investigator for the Securities
21 Division of the Commission.

22 121. Mr. Clark testified that Easy Money had not filed with the Commission as a seller of
23 securities, as an issuer of securities or as a securities sales entity.

24 122. He further testified that SFS had not registered with the Commission as a licensed
25 securities dealer.

26 123. Evidence at the hearing also indicated that neither Easy Money nor SFS had registered
27 any securities with the Commission.

28 124. Mr. Clark testified that neither James Cicerelli or David French were registered to sell

1 securities in Arizona, nor were they registered securities brokers.

2 125. Mr. Clark testified that the Articles of Incorporation of Easy Money indicated that it
3 was established on November 23, 1998, in Nevada. It listed officers of James Cicerelli as President,
4 David French as Secretary, James Cicerelli as Treasurer and David French as a Director. He testified
5 that the document was signed by Mr. Cicerelli as President. He further stated that the list of officers
6 was amended on February 19, 1999 to include James Cicerelli as President, David French as
7 Secretary, James Cicerelli as Treasurer and Chris Pedford, Bonnie A. Hart and Louise Hoffacker as
8 Directors. That document was also signed by Mr. Cicerelli.

9 126. Mr. Clark stated that SFS was never authorized to do business in Arizona. Evidence
10 was produced at the hearing that showed SFS was never incorporated.

11 127. Mr. Clark testified that based on his calculations, the actual sum of money invested by
12 investors with Easy Money and SFS was \$1,401,625.78.⁵

13 128. Mr. Clark testified that the investors received \$517,525 in the form of interest
14 payments.

15 129. Mr. Clark testified that he had conversations with Mr. French and Mr. Cicerelli in an
16 undercover investigation. During those conversations, Mr. French represented himself as a
17 stockbroker and told Mr. Clark about a program called Easy Money in which the investors made an
18 average of 30 percent on their money. When Mr. Clark asked over what period of time, Mr. French
19 responded "immediately, they got paid immediately."

20 130. Mr. Clark testified that when Mr. French indicated that he was part of a successful
21 operation called Easy Money, Mr. French neglected to tell him that Easy Money had filed bankruptcy
22 two months earlier.

23 131. Mr. Clark testified that in his investigation, he learned that Mr. French was neither a
24 stockbroker, nor did he have a brokerage firm.

25 132. Mr. Clark testified that Mr. French offered him several other investment opportunities,
26 including a business which made ornaments of granite which supposedly came from Mt. Sinai; a
27

28 ⁵ Ms. Peirson's \$70,000 investment was the only investment made with SFS.

1 transmission rebuilding business; and a business which provided discount medical coverage to people
2 who were subscribers.

3 133. Mr. Clark testified that Mr. French and Mr. Cicerelli promised a return of
4 approximately 2 percent a month or 24 percent a year on Mr. Clark's investment.

5 134. Mr. Clark testified that Mr. Cicerelli and Mr. French did not ask about Mr. Clark's
6 investment history, nor did they discuss the risks inherent in investing in these opportunities. Further,
7 they understood that Mr. Clark would only be a passive investor.

8 135. After conversations with Mr. French and Mr. Cicerelli, Mr. Clark testified he received
9 a partnership agreement from Mr. Cicerelli and SFS. The agreement basically stated that Mr. Clark
10 was to provide capital and that he would receive interest payments that would give him a return of
11 approximately 24 percent over the course of the year.

12 136. Mr. Clark testified that when researching Mr. French's background, he found that Mr.
13 French had a criminal record. Mr. Clark stated Mr. French has a felony conviction for making false
14 statements to the United States Government. Mr. Clark stated that the underlying facts of the
15 conviction were that Mr. French applied for a passport under a false name.

16 137. Mr. Clark testified he was never informed of the conviction by either Mr. Cicerelli or
17 Mr. French.

18 138. Mr. Clark testified that in his discussions with investors, the investors indicated to him
19 that they were not aware of Mr. French's conviction.

20 139. Mr. Hoffacker, Ms. Peirson and Ms. Andrews all stated during their testimony that if
21 they had been aware of Mr. French's felony conviction, that would have affected their decision to
22 invest with Easy Money and SFS.

23 140. Mr. Clark indicated that, with the exception of Bonnie Hart and Robert Hoffacker, the
24 other individuals who invested money with Easy Money or SFS, did not work for either Easy Money
25 or SFS and were only passive investors.

26 141. Based on the evidence, the agreements entered into between Respondents and the
27 investors are investment contracts and/or promissory notes, which are securities under the Act.

28 142. Based on the evidence, the investors in this case invested money in a common

1 enterprise, either with Easy Money or SFS, with the expectation of profits to be derived substantially
2 from the efforts of others.

3 143. In the case of Easy Money, the invested money was placed in the control of Mr.
4 Cicerelli and/or Mr. French and those funds were pooled under their management.

5 144. In the case of SFS, the invested money was placed into Mr. French's control.

6 145. The investors had an expectation of profit based upon Mr. Cicerelli's and Mr. French's
7 representation that Easy Money was operating as a successful business either through Easy Money or
8 SFS.

9 146. The investors' expectation of profits were delineated in their investment contracts
10 and/or promissory notes, usually promising a 30 percent return on their investment.

11 147. The investors relied on the efforts of Mr. Cicerelli and Mr. French to obtain the
12 promised rate of return and, with the exception of Louise Hoffacker and Bonnie Hart, they did not
13 participate in any of the business decisions by Respondents.

14 148. It is uncontested that the securities offered by Respondents were never registered as
15 required by the Act.

16 149. Mr. Cicerelli and Mr. French solicited investments either through personal contact,
17 telephone calls, letters or facsimiles.

18 150. Easy Money, SFS, Mr. Cicerelli and Mr. French collected more than \$1,400,000 from
19 investors through payments made directly to Mr. Cicerelli, Mr. French or SFS.

20 151. Based on the evidence, Respondents offered and sold securities that were not properly
21 registered.

22 152. It is uncontested that the Respondents were not registered as security dealer(s) or sales
23 person(s) as required by the Act.

24 153. Respondents, during the course of their business operation, mislead investors by
25 omitting material facts as follows:

- 26
- 27 (a) The criminal record of David French;
 - 28 (b) Financial statements that accurately reflected the financial condition of Easy Money and SFS; and
 - (c) That some of the investor funds were used to pay for Mr. Cicerelli and Mr.

French's personal living expenses and pay interest to other investors.

154. Respondents, during the course of their business operations, made the following misrepresentations to investors:

- (a) Respondents indicated that investor funds would only be used to purchase or lease vehicles;
- (b) That Easy Money had an established and proven track record;
- (c) That Easy Money had virtually no competition;
- (d) That the investments were 100 percent secured and insured against loss; and
- (e) Respondents issued materials to investors that used gross revenues, with no mention of expenses, to calculate the expected return on investors' money.

155. Mr. Cicerelli, Mr. French and SFS made the following misrepresentations to Mr. Clark:

- (a) that Easy Money was successful;
- (b) that Mr. French had previously been a stockbroker; and
- (c) that Mr. French had operated his own firm offering fixed rate investments;

156. Mr. Cicerelli, Mr. French and SFS failed to disclose to Mr. Clark that Mr. French had previously been convicted of a felony.

157. The Division recommended joint and several fines totaling \$150,000 against the Respondents, and further recommended the Respondents be held responsible for restitution jointly and severally.

158. The evidence is clear that the Respondents received capital investments of approximately \$1.4 million from investors. Easy Money had a gross revenue of approximately \$316,000 and approximately \$313,000 in expenses for a net income of approximately \$3,000. Although Easy Money only made \$3,000, it disbursed approximately \$517,000 in the form of interest payments to investors. Over \$540,000 of the investors' money was disbursed to either Mr. Cicerelli, Mr. French or related entities who were controlled by Mr. Cicerelli or Mr. French. It is clear that Respondents were operating a Ponzi scheme, as the only source of funds available to Easy Money to pay over \$517,000 in the form of interest payments was new investor money raised by Respondents. Easy Money and the Respondents operated this Ponzi scheme over a one and a half year timeframe and their actions amounted to investors losing over \$880,000.

159. The actions by the Respondents are further exacerbated by the fact that while Easy Money was in bankruptcy, Mr. French and Mr. Cicerelli offered several other investment

1 opportunities to an investigator of the Securities Division, who was acting in an under cover capacity.
2 The terms and conditions offered by Mr. French and Mr. Clark regarding those opportunities were
3 very similar to the ones Mr. French and Mr. Cicerelli offered to the investors of Easy Money.

4 160. In the case of Mr. French, his actions are further aggravated by the fact that he has a
5 felony conviction, which he never disclosed to investors. In addition, his actions with regard to Ms.
6 Margaret Peirson, as delineated above, amount to the creation of a second Ponzi scheme.

7 161. Based upon the facts and discussion herein, we find that a total penalty of \$375,000
8 and restitution of \$884,100.78 is appropriate in this matter.

9 CONCLUSIONS OF LAW

10 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
11 Arizona Constitution and the Securities Act.

12 2. Respondents offered and sold securities within or from Arizona within the meaning of
13 A.R.S. §§ 40-1801(15), 44-1801(21) and 44-1801(26).

14 3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were
15 neither registered nor exempt from registration.

16 4. Respondents violated A.R.S. § 44-1842 by offering or selling securities while neither
17 registered as a dealer or a salesman nor exempt from registration.

18 5. Respondents violated A.R.S. § 44-1991 by offering or selling securities within or from
19 Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or
20 misleading omissions of material facts, and (c) engaging in transactions, practices or courses of
21 business which operate or would operate as a fraud or deceit.

22 6. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
23 2032.

24 7. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
25 2132.

26 8. Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-2036.

27 ORDER

28 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission

1 under A.R.S. § 44-2032, Respondents Easy Money Auto Leasing, Inc., Superior Financial Services,
2 Inc., James Anthony Cicerelli and David Paul French shall cease and desist from actions described
3 hereinabove in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

4 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
5 A.R.S. § 44-2036, Respondent Easy Money Auto Leasing, Inc., shall pay as administrative penalties:
6 for the violations of A.R.S. § 44-1841, the sum of \$5,000; for the violations of A.R.S. § 44-1842, the
7 sum of \$5,000; and for the violations of A.R.S. § 44-1991; the sum of \$50,000.

8 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
9 A.R.S. § 44-2036, Respondent James Anthony Cicerelli shall pay as administrative penalties: for the
10 violations of A.R.S. § 44-1841, the sum of \$25,000; for the violations of A.R.S. § 44-1842, the sum
11 of \$25,000; and for the violations of A.R.S. § 44-1991, the sum of \$100,000.

12 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
13 A.R.S. § 44-2036, Respondents Superior Financial Services, Inc. and David Paul French shall, jointly
14 and severally, pay as administrative penalties: for the violations of A.R.S. § 44-1841, the sum of
15 \$25,000; for the violations of A.R.S. § 44-1842, the sum of \$25,000; and for the violations of A.R.S.
16 § 44-1991, the sum of \$170,000.

17 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall be
18 made payable to the State Treasurer for deposit in the general fund for the State of Arizona.

19 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall be
20 bear an interest rate of 10 percent per year for any outstanding balance after 60 days from the
21 effective date of this Decision.

22 IT IS FURTHER ORDERED that pursuant to authority granted to the Commission under
23 A.R.S. § 44-2032, Respondents Easy Money Auto Leasing, Inc., Superior Financial Services, Inc.
24 James Anthony Cicerelli and David Paul French, jointly and severally, shall make restitution in an
25 amount not to exceed \$828,600.78, subject to any legal set-offs confirmed by the Director of
26 Securities, and said restitution is to be made within 60 days of the effective date of this Decision.

27 IT IS FURTHER ORDERED that pursuant to authority granted to the Commission under
28 A.R.S. § 44-2032, Respondents Superior Financial Services, Inc. and David Paul French, jointly and

1 severally, shall also make restitution in an amount not to exceed \$55,500 to Ms. Margaret Peirson,
2 subject to any legal set-offs confirmed by the Director of Securities, and said restitution is to be made
3 within 60 days of the effective date of this Decision.

4 IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear an interest
5 rate of 10 percent per year for the period from the dates of the investment to the date of payment of
6 restitution by Respondents.

7 IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be
8 deposited into an interest bearing account(s) if appropriate, until distributions are made.

9 IT IS FURTHER ORDERED that any payments received from Easy Money Auto Leasing,
10 Inc., Superior Financial Services, Inc. James Anthony Cicerelli or David Paul French will be first
11 applied towards the balance of the restitution until it is paid in full. After the restitution in this matter
12 is paid in full, then the payments made by Easy Money Auto Leasing, Inc., Superior Financial
13 Services, Inc. James Anthony Cicerelli or David Paul French will be applied toward the
14 administrative penalty in this matter.

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1 IT IS FURTHER ORDERED that Easy Money Auto Leasing, Inc., Superior Financial
2 Services, Inc. James Anthony Cicerelli and David Paul French shall contact the Securities Division
3 by October 1, 2002, to establish a payment plan that delineates how they will repay the restitution and
4 pay the administrative fee in the timeframe as described in this Decision.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
8
9 CHAIRMAN

COMMISSIONER

COMMISSIONER

10
11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this ____ day of _____, 2002.

16
17 BRIAN C. McNEIL
18 EXECUTIVE SECRETARY

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23
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27
28
DISSENT _____
PJD:mlj

1 SERVICE LIST FOR:

EASY MONEY AUTO LEASING, INC. et al.

2 DOCKET NO.

S-03415A-01-0000

3
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11 David Paul French
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17 Bankruptcy Trustee for Easy Money Auto Leasing, Inc.

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